

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Steven T. Rosenberg Art Unit : 3714
Serial No. : 10/619,068 Examiner : Pandya, Sunit
Filed : July 11, 2003 Confirmation No.: 5908
Title : IMAGE-BASED CONTROL OF VIDEO GAMES

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO ELECTION REQUIREMENT

In the Office action dated December 18, 2006, the Examiner has indicated that an election is required between the asserted "species" of FIGS. 1-3 and FIGS. 4-5. In response to this election requirement, applicant provisionally elects the "species" of FIGS. 4 and 5, with traverse. Claims 13-24 read on the elected "species."

The election requirement is traversed because the Examiner is not authorized to require the proposed election of species. In particular, 37 CFR 1.146, which authorizes the Examiner to require an election of species, applies only to "an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby." The instant application, however, currently does not contain a generic claim that embraces all the embodiments shown in FIGS. 1-5. Without such a generic claim, the embodiments of FIGS. 1-3 and the embodiments of FIGS. 4 and 5 do not constitute "species" to which the claims properly can be restricted under 37 CFR 1.146 (see MPEP § 806.04).

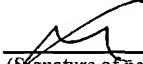
For these reasons, Applicants request that the Examiner reconsider and withdraw the election requirement.

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CERTIFICATE OF TRANSMISSION

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Attorney's Docket No.: 100202494-1
Reponse dated Jan. 18, 2007
Reply to Office action dated Dec. 18, 2006

Respectfully submitted,

Date: January 18, 2007



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